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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 806

J. H. PAGE, ET AL,

Petitioners,

v.

PAN AMERICAN PETROLEUM CORPORATION, ET AL.,

Respondents.

~~SUPPLEMENTAL~~ PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, FOR THE FIRST JUDICIAL DISTRICT OF TEXAS, AT HOUSTON

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FIDELITY PRINTING COMPANY, INC., HOUSTON

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To the Honorable Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Houston.

JURISDICTION

The judgment of the Court of Civil Appeals was rendered February 7th, 1967 motion for re-hearing denied March 16, 1967; and application for writ of error to the Supreme Court of Texas, was overruled July 21, 1967.

The jurisdiction of this Honorable Court is invoked under Seventh amendment to the Constitution of the United States; petitioners having demanded a jury trial, and hav-

ing paid the jury fee; and filing of a counter-acting affidavit of Mae Page Riley, one of the plaintiffs in the suit, swearing that her grandfather, Samuel Harrison Page, who held superior record title to an undivided one-half interest in the 83 acres of land in the Imla Keep league of land in Brazoria County, Texas, involved in this suit.

Section 15, of the Bill of Rights of the Constitution of 1876, of the State of Texas provides: "The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency."

In the appellants' motion for rehearing, and supplemental brief filed in the Supreme Court of Texas, appellants called attention to the affidavit of plaintiff, Mae Page Riley, stating that her grandfather and grandmother were Samuel Harrison Page and Elener Page; that her grandfather died in the year 1893, in Nueces County, Texas; and that she (Mrs. Riley), lived near her grandmother all her life — she died in the year 1912 (see affidavit Mrs. Riley), and that she had numerous conversations about her grandfather, Samuel Harrison Page, and that "my grandmother told me that Samuel Harrison Page never sold the land which he inherited from his mother, Eliza Page Chase, during his lifetime, and said land would belong to the heirs of Samuel Harrison Page after his death. Said affidavit is on page 103 of the Clerk's Transcript."

In the case of *Whitehead* v. *Shattuck*, 11 S. Ct. 276, 138 U.S., 34 L. ed. The Court, in referring to the Seventh Amendment declares that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." "That provision would be defeated if an action at law could be tried by a court of equity, as in the latter court a jury can only be

summoned at its discretion, to ascertain special facts for its enlightment." Citing:

Lewis v. *Cooke,* 90 U.S. 23; Wall. 466, 470 (23: 70, 71);
Killian v. *Ebbinghaus,* 110 U.S. 568, 573; (28: 246, 248);
Buzard v. *Houston,* 119 U.S. 347, 351 (30:451, 452).

"And so it has been held by this court 'that whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate and complete remedy, without the aid of a court of equity, *the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.*" Citing: *Hipp* v. *Babin,* 60 U.S.; 19 How. 271, 278 (15: 633, 635).

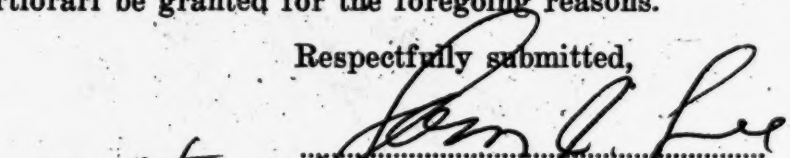
"It would be difficult and perhaps impossible, to state any general rule which would determine in all cases what should be deemed a suit in equity as distinguished from an action at law, for particular elements may enter into consideration which would take the matter from one court to the other; but this may be said, that where an *action is simply for the recovery and possession of specific real property,* including damages for withholding it, has always been of that class. The right which is in this case the plaintiff wishes to assert is his title to certain real property; the remedy which he wishes to obtain is its possession and enjoyment; and in a contest over the title both parties have a constitutional right to call for a jury."

The Supreme Court of the United States has always held, in its decisions, that where a litigant has demanded a jury trial, and paid the fee, and plead the Seventh Amendment of the Constitution of the United States in the State Court will take jurisdiction of the case.

CONCLUSION

Appellants respectfully pray that this petition for a writ of certiorari be granted for the foregoing reasons.

Respectfully submitted,



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